

B-237135

DELAYED DISTRIBUTION

RELEASED

December 21, 1989

The Honorable J. J. Pickle
Chairman, Subcommittee on Oversight
Committee on Ways and Means
House of Representatives

Dear Mr. Chairman:

By letter of September 11, 1988, you asked whether the Customs Service's practice of incurring obligations against anticipated reimbursements from the sale of seized and forfeited assets is legal. Unless Congress provides specific statutory authority, an agency may not obligate anticipated reimbursements from future sales of property. Accordingly, Customs violated the Antideficiency Act if it did not have sufficient funds available from other sources for obligation when it recorded an obligation against anticipated reimbursements from the sale of property. 31 U.S.C. §1341(a) (1982).

Our response is based on information collected and supplied to us by members of the Subcommittee staff. Unfortunately, due to the limited amount of time available, we were unable to validate the information or obtain the Customs Service's views concerning this matter, as is our usual practice.

BACKGROUND

Under the Tariff Act of 1930, the Customs Service is responsible for the management, maintenance, and disposal of property obtained by seizure, forfeiture, or abandonment. 19 U.S.C. §1605 (1982). To help defray expenses associated with that responsibility, Congress established the Customs Forfeiture Fund in October 1984. Pub. L. No. 98-573, Title II, § 213, 98 Stat. 2973, 2986 (1984). Congress re-authorized the Fund with slightly different provisions in 1988. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, Title VII, § 7634, 102 Stat. 4181, 4475.

In 1985, Customs contracted with Northrop Worldwide Services to manage, maintain, and dispose of the property. We understand that each fiscal year Customs estimated the projected contract costs and anticipated reimbursements. For example, in fiscal year 1987, the Northrop contract cost

approximately \$13 million. In accounting for the contract, Customs simultaneously recorded an obligation and a reimbursement (based on the amount of proceeds anticipated from future sales of property) for the amount of the contract. By recording the reimbursement before actual collection, Customs caused its accounts to show funds available for obligation of about \$13 million that did not exist.

By the end of fiscal year 1987, Customs had only collected about \$950,000 of the amount originally recorded as a reimbursement. Consequently, Customs' accounts overstated seized property reimbursements throughout the fiscal year.

DISCUSSION

The Antideficiency Act

The Antideficiency Act, 31 U.S.C. §1341 (1982), imposes limitations on the obligation and expenditure of appropriations by agencies so that agencies will operate within the amounts appropriated. Under the Antideficiency Act, an officer or employee of an agency may not make or authorize an expenditure or obligation in excess of an amount available in an appropriation or fund for expenditure or obligation.

To determine whether Customs violated the Antideficiency Act, we must determine whether Congress made anticipated reimbursements from the future sale of seized and forfeited property available for obligation. In the Tariff Act of 1930 and the acts establishing the Customs Forfeiture Fund, Congress refers only to the "proceeds" of sale of forfeited property as being available for reimbursement or deposit. See 19 U.S.C. §1609 (1982); Pub. L. No. 98-473, § 317, 98 Stat. 2040, 2054 (1984); and, Pub. L. No. 98-573, Title II, § 213, 98 Stat. 2973, 2986 (1984). Our review of these acts reveals no mention of, let alone authority to use, anticipated rather than actual proceeds. We think that the wording of these statutes clearly indicates that Congress did not intend for proceeds from the sale of forfeited property to be available for obligation until actually received by the agency.

Previously, our office has held that obligations cannot be charged against anticipated proceeds from the sale of property. 35 Comp. Gen. 356 (1955). Moreover, we have held that since anticipated proceeds from the sale of property are not available for obligation, an Antideficiency Act violation occurs at the moment obligations are incurred against such proceeds in excess of available budgetary

resources. 60 Comp. Gen. 520, 522 (1981). Accordingly, since anticipated reimbursements from the sale of seized and forfeited property are not available for obligation, Customs violated the Antideficiency Act when it recorded an obligation against such reimbursements unless it had other amounts available to cover that obligation.

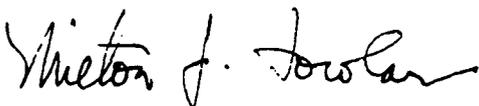
Consistent with our previous decisions, OMB instructs executive branch agencies that, unless authorized by statute, they may not obligate reimbursements until actually received. See Office of Management and Budget Circular No. A-34, Sec. 31.4, Aug. 26, 1985. Therefore, Customs' practice of obligating against anticipated reimbursements from the sale of seized and forfeited property was also inconsistent with OMB Circular No. A-34.

Conclusion

By obligating against anticipated reimbursements, Customs violated the Antideficiency Act to the extent that such treatment resulted in Customs incurring obligations in excess of funds otherwise available. In so doing, Customs neglected the most important fund control requirement in the federal government--that obligations be limited to amounts of budgetary resources available for such obligations.

We hope the foregoing is of assistance to you. In accordance with a member of the Subcommittee staff, this letter will be released 10 days from its date.

Sincerely yours,



for Comptroller General
of the United States

APPROPRIATIONS/FINANCIAL MANAGEMENT
 Appropriation Availability
 Amount availability
 Antideficiency prohibition
 Violation